

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

TOM DUNNE, JR., )  
                        )  
Plaintiff,           )  
                        )  
v.                     )       No. 4:16 CV 1351 DDN  
                        )  
RESOURCE CONVERTING, LLC, et al., )  
                        )  
Defendants.           )

**THIRD AMENDED CASE MANAGEMENT ORDER**

This action is before the court on plaintiff's motion to amend the case management order. (Doc. 163). Defendants Gary Brinkmann; Sebright Products, Inc.; Tim Danley; Rick Kersey; Resource Converting, LLC; Jerry Flickinger; JWR, Inc.; and David Wolf have each opposed the schedule proposed by plaintiff. (Docs. 164-66).

Plaintiff requests that this court extend the current Case Management Order by at least six months, because the pleading stage of this case took more than nine months. Plaintiff also requests that this case change tracks to the Track 3 setting, as a complex case that requires 24 months of litigation, not 18 months. (Doc. 163). Defendants respond that the dismissal of several of plaintiff's counts have narrowed this case and made it simpler, not more complex, and thus Track 2 remains appropriate. Each of the defendants argues that plaintiff has not yet begun discovery due to his own lack of diligence, not due to any failure of the defendants to make discovery available. For example, Brinkmann and Sebright argue that plaintiff delayed sending out his interrogatories and requests for production and has also delayed responding to defendants' discovery requests. (Doc. 164). Danley, Kersey, and Resource argue they made the PAD System available for inspection in February 2017, but plaintiff declined to view or inspect the PAD System. (Doc. 165). Flickinger, JWR, and Wolf have asked plaintiff for deposition dates since March 13, 2017, but were not given a proposed date

until June 15, 2017, and that date is not until August 30, 2017. (Doc. 166). These defendants anticipate that even with this delay, however, the required depositions will be complete by October 2017. (Doc. 166).

For these reasons, Brinkmann and Sebright argue that the case management order should not be amended at all, but if it is, deadlines should be extended by two months, with the trial setting postponed by two months or longer if needed for coordination purposes. (Doc. 164). Danley, Kersey, and Resource argue that a two-month extension is reasonable, but a six-month extension is not, even for the trial setting. (Doc. 165). Flickinger, JWR, and Wolf argue that the case management order should not be modified at all. (Doc. 166).

After hearing the parties at oral argument on this matter on June 29, 2017,

**IT IS HEREBY ORDERED** that the Case Management Order is amended in the following respects:

- (1) **PLAINTIFF'S EXPERTS.** Plaintiff must disclose all expert witnesses and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than September 15, 2017, and have such expert witnesses available for deposition no later than October 15, 2017.
- (2) **DEFENDANTS' EXPERTS.** Defendants must disclose all expert witnesses and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than November 2, 2017, and have such expert witnesses available for deposition no later than December 1, 2017.
- (3) **DISCOVERY COMPLETION.** The parties must complete all non-expert discovery in this case from parties and non-parties no later than December 30, 2017.
- (4) **DISPOSITIVE MOTIONS AND EXPERT OPINION MOTIONS.** Any dispositive motion(s) and any expert opinion motion(s) must be filed no later than January 13, 2018. Opposition briefs must be filed no later than February 15, 2018, and any reply brief may be filed no later than March 1, 2018. The parties must submit a courtesy paper copy of their motions, memoranda, and exhibits directly to chambers. A hearing on any then pending motion, including any dispositive and expert opinion motion(s) is hereby set for March 20, 2018, at 10:00 a.m.

- (5) **FINAL PRETRIAL CONFERENCE.** The final pretrial conference is set for August 22, 2018, at 10:00 a.m.
- (6) **TRIAL DATE.** This case is set for a **JURY TRIAL** beginning on September 12, 2018, at 9:00 a.m. Trial is expected to last at least 1 week.

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/s/ David D. Noce  
**UNITED STATES MAGISTRATE JUDGE**

Signed on June 29, 2017.